APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/895,235	06/28/2001	Lance W. Russell	10003532-1	8674

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EXAMINER
BILGRAMI, ASGHAR H

ART UNIT	PAPER NUMBER
2143	

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/895,235	RUSSELL, LANCE W.
	Examiner	Art Unit	
	Asghar Bilgrami	2143	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>27 December 2004</u>.
2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
   closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1-25</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1-25</u> is/are rejected.
7)☐ Claim(s) _____ is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☒ The drawing(s) filed on <u>28 June 2001</u> is/are: a)☒ accepted or b)☐ objected to by the Examiner.
   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
   a)☐ All   b)☐ Some * c)☐ None of:
      1.☐ Certified copies of the priority documents have been received.
      2.☐ Certified copies of the priority documents have been received in Application No. _____.
      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
         application from the International Bureau (PCT Rule 17.2(a)).
   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date <u>06/28/2001</u>.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 102

1.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2.   Claims 1-20 are rejected under 35 U.S.C. 102(e) as being unpatentable by Forbes et al

(U.S. 6,728,896).

3.   As per claims 1, 10, 11, 19, 20, 21- 24 & 25 Forbes disclosed a method for managing a

plurality of distributed nodes of a network, comprising: (a) on a current one of the network

nodes, determining a status of the current [[a]] network node. Forbes describes "heart beats" as

means for detecting the status of the nodes (col.4, lines 27-33 & col.9, lines 1-18); [[and]] (b) in

response to a determination that the current network has failed, initiating a recovery process on

the current network node; (c) migrating from the current network node to a successive one of the

network nodes; and (d) repeating (a), (b), and (c) with the current network node corresponding to

the successive network.(col.3, lines 48-67, col.4, lines 1-33, 53-65 & col.11, lines 15-23).

4.   As per claims 2 & 12 Forbes disclosed the system of claim 1, wherein the recovery

module comprises a routing component for determining a next hop address from an origin

network node to a destination network node (col.9, lines 8-12).

5.   As per claims 3 & 13 Forbes disclosed the system of claim 2, wherein the routing

component is configured to determine the next hop address based upon a routing table stored at

the origin network node (col.9, lines 8-12).

6.   As per claims 4 & 14 Forbes disclosed the system of claim 1, wherein the recovery

module is configured to determine the status of a network node by sending an inter-process

communication to a node process (col.3, lines 48-47, col.4, lines 1-8).

7.   As per claims 5 & 15 Forbes disclosed the system of claim 1, wherein the recovery

module is configured to determine the status of a network node in accordance with a heartbeat

messaging protocol (col.4, lines 27-33).

8.   As per claims 6 & 16 Forbes disclosed the system of claim 1, wherein the recovery

module is configured to initiate a recovery process on a failed network node in accordance with a

restart protocol (col.9, lines 1-17).

9.   As per claims 7 & 17 Forbes disclosed the system of claim 6, 'wherein the recovery

module is configured to initiate a restart of a failed node process by transmitting a request to a

process execution service operating on the failed network node (col.9, lines 1-17).

10.   As per claims 8 & 18 Forbes disclosed the system of claim 1, wherein the recovery

module is configured to transmit a node status message to a network management module

operating at a network management network node (col.3, lines 48-67, col.4, lines 1-11).

11.   As per claim 9 Forbes disclosed the system of claim 8, wherein the node status message

comprises information obtained from a log file generated at the failed network node (col.3, lines

48-67, col.4, lines 1-33).

Response to Arguments

12.   When prior art is presented to the applicants, it is the responsibility of the applicants to

not simply read portions of the prior art but to also gain an understanding of the spirit of the

design.

13.   The applicants argued that "Forbes does not teach or suggest anything about recovery

module that is configured to migrate from one network node to the another, determine a status of

a network node, and initiate a recovery process on a failed network node, as recited in

independent claim 1.

14.   As to applicants arguments Forbes disclosed the recovery module (MSCS) which can

detect and recover from server or application failures (see col.3, lines 48-67) and also talks about

recovering its previous state after being switched over to second server once the first server

failed on the network (col.11, lines 15-22).

15.   The applicant argued that the examiner failed to point specifically to the component of

Forbes system that he believes corresponds to the recovery module recited in claim 1.

16.   As to applicants arguments Forbes does not specifically mentions "recovery module", but

one in the ordinary skill in the art can understand that MSCS is conducting the functions of a

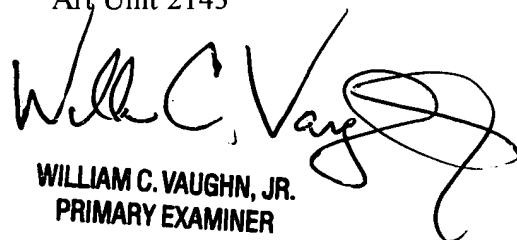"recovery module" within itself.

Conclusion

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Asghar Bilgrami whose telephone number is 571-272-3907. The

examiner can normally be reached on M-F, 8:00-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, David Wiley can be reached on 571-272-3923. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Asghar Bilgrami
Examiner
Art Unit 2143

AB

WILLIAM C. VAUGHN, JR.
PRIMARY EXAMINER